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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,304	11/17/2003	LeNoir E. Zaiser	2173.1004-002	5230
21005	7590	12/01/2004	EXAMINER	
HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133			MITCHELL, TEENA KAY	
		ART UNIT	PAPER NUMBER	
		3743		

DATE MAILED: 12/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/715,304	ZAISER ET.AL.
	Examiner Teena Mitchell	Art Unit 3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 17 November 2003.
 2a) This action is **FINAL**. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-54 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-54 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on 17 November 2003 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>6/21/04</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Priority

While applicant in the first paragraph of the specification does list continuing data related to the instant application, applicant is required to list the current status of all applications (e.g. 09/342,953 now US Patent 6,647,982). Correction is required.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-54 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8, 17, 19, 21, 32-38, 40, 41, and 43 respectively of U.S. Patent No. 6,647,982. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of claim 1 of the instant application can be found in claim 1 of the patent. Claim 1 of the instant application merely broader than patented claim 1, therefore the patented claim "anticipates" the application claim. In re Goodman, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993). With respect to claim 2 of the instant

application, the limitations can be found in claim 2 of the patent. **With respect to claim 3 of the instant application**, the limitations can be found in claim 3 of the patent. **With respect to claim 4 of the instant application**, the limitations can be found in claim 4 of the patent. **With respect to claim 5 of the instant application**, the limitations can be found in claim 5 of the patent. **With respect to claim 7 of the instant application**, the limitations can be found in claim 6 of the patent. **With respect to claim 8 of the instant application**, the limitations can be found in claim 7 of the patent. **With respect to claim 9 of the instant application**, the limitations can be found in claim 17 of the patent. **With respect to claim 10 of the instant application**, the limitations can be found in claim 8 of the patent. **With respect to claim 11 of the instant application**, the limitations can be found in claim 1 of the patent. **With respect to claim 12 of the instant application**, the limitations can be found in claim 1 of the patent. **With respect to claim 13 of the instant application**, the limitations can be found in claim 32 of the patent. **With respect to claim 14 of the instant application**, the limitations can be found in claim 32 of the patent. **With respect to claim 15 of the instant application**, the limitations can be found in claims 1, 3, and 17 of the patent. **With respect to claim 16 of the instant application**, the limitations can be found in claims 2 and 33 of the patent. **With respect to claim 17 of the instant application**, the limitations can be found in claim 34 of the patent. **With respect to claim 18**, the limitations can be found in claim 35 of the patent. **With respect to claim 19 of the instant application**, the limitations can be found in claim 36 of the patent. **With respect to claim 21 of the instant application**, the limitations can be found in claim 37

of the patent. **With respect to claim 22 of the instant application**, the limitations can be found in claim 40 of the patent. **With respect to claim 23 of the instant application**, the limitations can be found in claims 8 and 19 of the patent (inasmuch as at least 500 pounds per square inch is about the claimed over about 500 pounds per square inch). **With respect to claim 24 of the instant application**, the limitations can be found in claim 38 of the patent. **With respect to claim 25 of the instant application**, the limitations can be found in claim 38 of the patent. **With respect to claim 26 of the instant application**, the limitations can be found in claim 32 of the patent. **With respect to claim 27 of the instant application**, the limitations can be found in claim 37 of the patent. **With respect to claim 28 of the instant application**, the limitations can be found in claims 21 and 43 of the patent. **With respect to claim 29 of the instant application**, the limitations can be found in claim 26 of the patent. **With respect to claim 30 of the instant application**, the limitations can be found in claim 3 of the patent. **With respect to claim 31 of the instant application**, the limitations can be found in claim 4 of the patent. **With respect to claim 32 of the instant application**, the limitations can be found in claim 5 of the patent. **With respect to claim 34 of the instant application**, the limitations can be found in claim 6 of the patent. **With respect to claim 35 of the instant application**, the limitations can be found in claim 7 of the patent. **With respect to claim 36 of the instant application**, the limitations can be found in claim 17 of the patent. **With respect to claim 37 of the instant application**, the limitations can be found in claim 19 of the patent. **With respect to claim 38 of the instant application**, the limitations can be found in claim 1

of the patent. **With respect to claim 39 of the instant application**, the limitations can be found in claims 1, 21, and 43 of the patent. **With respect to claim 40 of the instant application**, the limitations can be found in claim 1 of the patent. **With respect to claim 41 of the instant application**, the limitations can be found in claim 1 of the patent. **With respect to claim 42 of the instant application**, the limitations can be found in claims 21 and 43 of the patent. **With respect to claim 43 of the instant application**, the limitations can be found in claim 41 of the patent. **With respect to claim 44 of the instant application**, the limitations can be found in claim 3 of the patent. **With respect to claim 45 of the instant application**, the limitations can be found in claim 4 of the patent. **With respect to claim 46 of the instant application**, the limitations can be found in claim 5 of the patent. **With respect to claim 48 of the instant application**, the limitations can be found in claim 37 of the patent. **With respect to claim 49 of the instant application**, the limitations can be found in claim 25 of the patent. **With respect to claim 50 of the instant application**, the limitations can be found in claim 19 of the patent. **With respect to claim 51 of the instant application**, the limitations can be found in claim 43 of the patent. **With respect to claim 52 of the instant application**, the limitations can be found in claim 43 of the patent. **With respect to claim 53 of the instant application**, the limitations can be found in claim 1 of the patent. **With respect to claim 54 of the instant application**, the limitations can be found in claim 37 of the patent. **With respect to claims 6, 20, 33, and 47 of the instant application**, the patent does not disclose the fitting being a hose connector, however, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to have the fitting be a hose connector as such is well known in the respiratory art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Teena Mitchell whose telephone number is (571) 272-4798. The examiner can normally be reached Monday-Friday, however the examiner is on a flexible schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Teena Mitchell
Examiner
Art Unit 3743
November